

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNA M. SHROPSHIRE and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, TX

*Docket No. 03-1293; Submitted on the Record;
Issued December 3, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained greater than a two percent impairment to her right upper extremity; (2) whether the Office of Workers' Compensation Programs properly determined that appellant had a zero percent impairment to her left upper extremity; and (3) whether the Office, in its decisions dated January 9 and February 19, 2003, properly refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On November 2, 2000 appellant, then a 46-year-old manual clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that, as a result of sorting mail, she sustained carpal tunnel syndrome in both her wrists. By letter dated January 19, 2001, the Office accepted appellant's claim for carpal tunnel syndrome. On June 15, 2001 appellant underwent a right carpal tunnel release and on October 1, 2001 appellant underwent a left carpal tunnel release.

On March 27, 2002 appellant filed a claim for a schedule award. By decision dated November 8, 2002, the Office issued a schedule award for a two percent impairment of the right upper extremity and noted a zero percent impairment of the left upper extremity.

By letter dated December 7, 2002, appellant stated that she was "requesting a 'reconsideration' hearing on [her] scheduled award." On January 9, 2003 the Office denied appellant's request for merit reconsideration, as she did not raise substantive legal questions nor include new and relevant evidence.

By letter dated February 3, 2003, appellant again requested reconsideration. By decision dated February 19, 2003, the Office again denied reconsideration without conducting a review on the merits.

The Board finds that this case is not in posture for decision.

In the instant case, the Office issued a schedule award by decision dated November 8, 2002. By letter dated December 7, 2002, appellant stated that she was “requesting a ‘reconsideration’ hearing on [her] scheduled award.” The Office treated appellant’s letter as a request for reconsideration; it did not address appellant’s request for a hearing.

Section 8124(b) of the Federal Employees’ Compensation Act, concerning a claimant’s entitlement to a hearing before an Office representative, states: “Before review under section 8128(a) of this title, a claimant not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary.”¹ As appellant’s request for a hearing was properly filed within 30 days of the Office’s November 8, 2002 decision, the Board finds that appellant made a timely request for an oral hearing. This request was improperly ignored by the Office. Accordingly, this case is remanded and the Office is instructed to provide appellant an oral hearing, as she requested by her letter dated December 7, 2002.²

The decisions of the Office of Workers’ Compensation Programs dated February 19 and January 9, 2003 and November 8, 2002 are hereby vacated and this case is remanded for further proceedings consistent with this opinion.³

Dated, Washington, DC
December 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ 5 U.S.C. § 8124(b).

² *See generally Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ In light of the disposition of this case, any discussion of the merits would be premature.